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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,186	03/19/2004	Werner Doetsch	038715.53337US	6767

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EXAMINER	
CHORBAJI, MONZER R	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
07/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/804,186	DOETSCH ET AL.	
	Examiner	Art Unit	
	MONZER R. CHORBAJI	1797	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *4,7,8 and 11*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Continuation of 13. Other:

Response to Arguments

On pages 3-6 of the Remarks section; Applicant argues the following: that Grimberg discloses using the organic phosphonic acid in an amount below 50 mg/kg in order to avoid fouling; that Grimberg teaches using hydrogen peroxide of high purity whereas in the instant claims is not of high purity; that Grimberg does not disclose to the skilled person in the art that it is possible to use the composition as dip bath liquid; that Feasey is nonanalogous art since Feasey relates to the stabilization of concentrated hydrogen peroxide solutions which tend to decompose on storage; that contrary to the assertion in the office action, Applicants submits that Example 5 of Feasey does not disclose that the concentration range of between 50 to 1000 ppm for the phosphoric acid is found to be the most effective; and that the very diluted solutions of Feasey are not compatible with the sterilization of foodstuff packaging material which is not taught in Feasey.

Grimberg does not teach employing phosphonic acid outside his disclosed range, but rather provides a range that is found suitable (in col.3, lines 29-30, Grimberg uses the word "Typically" that is construed as "normally) for combination with hydrogen peroxide in sterilization of packaging material (col.1, lines 29-32). Grimberg uses high purity hydrogen peroxide solution in a preferred embodiment (col.3, lines 42-44) without excluding other usages. Grimberg teaches that in the art of sterilizing packaging material, liquid hydrogen peroxide can either be sprayed on such material or the material is soaked in a bath containing liquid hydrogen peroxide (col.1, lines 19-30). Therefore, absent any criticality, choosing either one of the hydrogen peroxide sterilization approach is a matter of routine experimentation depending on the degree of contamination of the packaging material so that for heavily contaminated packaging material one would choose the spraying approach and for not so contaminated material one would choose soaking it in a hydrogen peroxide bath (col.1, lines 28-30).

Feasey, like Grimberg, is concerned with providing stabilized hydrogen peroxide solution for various applications (col.1, lines 5-7 and col.4, lines 13-15) discloses a composition of hydrogen peroxide and phosphonic acid and further teaches that the concentration of phosphonic acid varies between 50 to 1000 ppm, because this concentration range of between 50 to 1000 ppm for phosphonic acid is found to be the most effective (col.7, example 5) and is further dependent on the intended use (col.4, lines 40-58). It would have been obvious to one of ordinary skill in the art at the time of the invention to widen Grimberg concentration range of phosphonic acid to a different concentration range as taught by Feasey, because this concentration range of between 50 to 1000 ppm for phosphonic acid is found to be the most effective as explained by Feasey (Feasey, col.7, example 5). In addition, Feasey teaches that the amount of the stabilizer varies in general from 10 ppm to no more than 5000 ppm, but the actual amount differs for different purposes for the composition (col.4, lines 40-46). Specifically, in example 5, Feasey teaches that liquid hydrogen peroxide in combination with the stabilizer at a concentration between 50 and 1000 ppm is used to sterilize contact lenses. Given the teaching that the stabilizer is useful in lens cleaning solutions up to a concentration of 1000 ppm, one of ordinary skill in the art would have been motivated to expand the range taught by Grimberg. It would have been obvious, to one of ordinary skill in the art to determine, through routine experimentation, an expanded effective range of the preservative in the method of Grimberg, given the teachings of Feasey that phosphonic acid can be used in contact lens cleaning up to an effective concentration of 1000 ppm, where problems with residue would be equally, if not more, detrimental to the human body than in food packaging.